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No. .....

In The

Supreme Court of the United States

October Term, 1984

LOUIS LIPHETE, et. al.,

Petitioners,

vs.

MERRITT STIERHEIM, et. al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the decision below upholding the refusal to grant a homestead tax exemption to black, Haitian aliens, who have continuously and lawfully resided, for over four years, in the State of Florida, by virtue of a Presidential Order, on the grounds that they do not have permanent immigrant visas is in conflict with this Court's decisions in *Elkins v. Moreno,* 435 U.S. 647 (1978); *Toll v. Moreno,* 458 U.S. 1 (1982); *Vlandis v. Kline,* 412 U.S. 441 (1973)?

Whether the decision below upholding the denial of a Homestead Tax Exemption to Petitioners because they do not possess a permanent immigrant visa, despite lawfully residing in Florida, for over four years, by virtue of a Presidential Order, deprives Petitioners of equal protection and due process of law, as well as violates the Supremacy Clause of the Constitution of the United States?

PARTIES TO THE PROCEEDING

The Petitioners are: Louis Liphete and Diane Mitial.

The Respondents are: Merritt Stierheim, as County Manager for Dade County, Florida; Franklin B. Bystrom, as Property Appraiser for Dade County, Florida; and Randy Miller, as Director of the Department of Revenue.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 6

REASONS FOR GRANTING THE WRIT 10

I. This Court Should Grant Certiorari Because The Decision Of Florida's Court Directly Conflicts With This Court's Decisions in *Elkins v. Moreno*, 435 U.S. 647 (1978), *Vlandis v. Kline*, 412 U.S. 441 (1973), *Toll v. Moreno*, 458 U.S. 1 (1982) 10

A. The Florida Decision Conflicts With *Elkins v. Moreno*, 435 U.S. 647 (1978), Because The Florida Rule Does Not Examine The Alien's Specific Status To Determine Whether The Federal Government Has Authorized The Alien To Remain In The United States Indefinitely 11

B. The Florida Decision Conflicts With *Vlandis v. Kline*, 412 U.S. 441 (1973), Because Florida Has Established An Irrebutable Presumption That Only Aliens With "Green Cards" Can Permanently Reside In The State 16

C. The Decision Of The Courts Of Florida Directly Conflicts With *Toll v. Moreno*, 458 U.S. 1 (1982), Because It Imposes On Petitioners An Ancillary Burden Not Contemplated By The Presidential Order Creating The Cuban/Haitian Entrant Status, And Frustrates The Executive Policy Implicit In That Order 18

TABLE OF CONTENTS—Continued

Page

II. Florida's Failure To Adhere To Well Established Doctrines Of This Court Denied Petitioners Equal Protection Of The Law And Due Process Of Law And Violated The Supremacy Clause Of The United States Constitution 19

A. The Florida Decision Deprives Petitioners Of Equal Protection Of The Laws By Treating Them Differently From Other Permanent Homeowners Solely Because Of Their Alien Status 20

B. The Florida Decision Deprives Petitioners Of Due Process Of The Law By Creating An Arbitrary And Irrebuttable Presumption To Their Detriment 22

C. The Florida Court's Failure To Adhere To Well-Established Doctrine Of This Court Violates The Supremacy Clause Of The United States Constitution 24

III. Because Of Florida's Procedure For Invoking The Discretionary Jurisdiction Of The Florida Supreme Court There Exists No Method For Correcting A Recurring Constitutional Error 26

CONCLUSION 28

TABLE OF AUTHORITIES

CASES:

Alcime v. Bystrom, 451 So. 2d 1037 (Fla. 3d DCA 1984) 1, 8, 27

Dodi Publishing Co. v. Editorial American, S.A., 385 So. 2d 1369 (Fla. 1980) 27

Elkins v. Moreno, 435 U.S. 647 (1978) ..... *passim*

TABLE OF AUTHORITIES—Continued

Page

Examining Board v. Flores De Otero, 426 U.S. 572 (1976) 22

Goldberg v. Kelly, 397 U.S. 254 (1970) 23

Goss v. Lopez, 419 U.S. 565 (1975) 23

Graham v. Richardson, 403 U.S. 365 (1971) 22, 26

Harisiades v. Shaughnessy, 342 U.S. 580 (1952) 26

Heiner v. Donnan, 285 U.S. 312 (1932) 17, 18

Hines v. Davidowitz, 312 U.S. 52 (1941) 26

In Re Griffiths, 413 U.S. 717 (1973) 22

Jenkins v. State, 385 So. 2d 1356 (1980) 27

Juarrero v. McNayr, 157 So. 2d 79 (Fla. 1963) ..... *passim*

Liphete v. Stierheim, 455 So. 2d 1348 (Fla. 3d DCA 1984) 1, 2, 6

Liphete v. Stierheim, Case No. 84-38353, (Cir. Ct., 11th Judicial Circuit of Fla., Feb. 16, 1984) 1, 8

Mathews v. Diaz, 426 U.S. 67 (1976) 26

Nyquist v. Mauclet, 432 U.S. 1 (1977) 22

Robles Del Mar, Inc. v. Town of Indian River Shores, 385 So. 2d 1371 (Fla. 1980) 27

Sugarman v. Dougall, 413 U.S. 634 (1973) 22

Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948) 26

Toll v. Moreno, 458 U.S. 1 (1982) ..... *passim*

Truax v. Raich, 239 U.S. 33 (1915) 26

U.S. v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936) 26

TABLE OF AUTHORITIES—Continued

Page

U.S. v. New Orleans Public Service, Inc., 553 F. 2d 459 (5th Cir., 1977) 15

Vlandis v. Kline, 412 U.S. 441 (1973) ..... *passim*

CONSTITUTIONAL AND STATUTORY PROVISIONS:

United States Constitution, Article I, Section 8, Clause 4 26

United States Constitution, Article VI, Clause 2 ..... *passim*

United States Constitution, Amendment XIV 2, 3

8 U.S.C. Section 1101 (a) (15) 13

28 U.S.C. Section 1257 (3) 3

42 U.S.C. Section 1981 2

42 U.S.C. Section 1983 2

Florida Constitution, Article V, Section (3) (b) (3) 1, 2, 9, 27

Florida Constitution, Article VII, Section 6 ..... *passim*

Section 196.012, Fla. Stat. (1983) 3, 4, 20

Section 196.015, Fla. Stat. (1983) ..... *passim*

Section 196.031, Fla. Stat. (1983) ..... *passim*

OTHER AUTHORITIES:

Fla. Rules of Appellate Procedure 9.030 (a) (2) (A) (iii) 1, 2, 9, 27

Current Policy No. 193, June 20, 1980, U.S. Department of State, Statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs 15

In-House Memorandum, Immigration and Naturalization Service (November 10, 1980) 13, 14

TABLE OF AUTHORITIES—Continued

Page

Interpreter Releases, Vol. 57, No. 25, pages 305-306 (June 30, 1980) 15

Directive from Social Security Administration (June 27, 1980) 14

Telegraphic Message from Social Security Administration (June 27, 1980) 15

APPENDIX TABLE OF CONTENTS

1. Order of Supreme Court of Florida in Liphete, et al., v. Stierheim, et al., Case No. 66, 121 (November 7, 1984) A1

2. Notice to Invoke Discretionary Jurisdiction of the Supreme Court of Florida in Liphete, et al., v. Stierheim, et al., Case No. 84-590 (October 31, 1984) A2

3. Order of the District Court of Appeal of Florida, Third District in Liphete et al., v. Stierheim, et al., Case No. 84-590 (October 2, 1984) A4

4. Order of the Circuit Court of the 11th Judicial Circuit In and For Dade County, Florida, Dismissing Plaintiffs' First Amended Complaint in Liphete, et al., v. Stierheim, et al., Case No. 38353 (February 16, 1984) A5

5. Plaintiffs' First Amended Complaint in Liphete, et al., v. Stierheim, et al., Case No. 83-38353 (November 16, 1983) A8

6. Special Master's Findings of Fact and Conclusions of Law, Appeal of Louis Liphete, et al., to Dade County, Florida, Property Appraisal Adjustment Board (September 14, 1983) A18

APPENDIX TABLE OF CONTENTS—Continued

Page

7. Affidavit of Louis Liphete, filed with Property Appraisal Adjustment Board, Dade County, Florida (July 19, 1983) A22

8. Affidavit of Diane Mitial, filed with Property Appraisal Adjustment Board, Dade County, Florida (July 19, 1983) A24

9. Notice of Disapproval of Application for Homestead Tax Exemption by the County Property Appraiser, Dade County, Florida (May 13, 1983) A26

10. Order of the District Court of Appeal of Florida, Third District in Alcime, et al., v. Bystrom, Case No. 83-2447, 451 So. 2d 1037 (3d D.C.A. 1984), (June 26, 1984) A29

11. Immigration and Naturalization Document (Form I-94) of Petitioner Louis Liphete, showing Cuban/Haitian Entrant status A31

12. In-House Memorandum, Immigration and Naturalization Service (November 10, 1980) A32

13. Directive from Social Security Administration (June 27, 1980) A35

14. Telegraphic Message from Social Security Administration (June 27, 1980) A38

15. Current Policy No. 193, June 20, 1980, United States Department of State, Statement of Victor H. Palmieri, U.S. Coordinator For Refugee Affairs A40

16. Interpreter Releases, Vol. 57, No. 25, pages 305-306, June 30, 1980 ..... A48

17. Interpreter Releases, Vol. 57, No. 41, pages 498-499, October 23, 1980 ..... A51

OPINIONS BELOW

On November 7, 1984, the Supreme Court of Florida dismissed Petitioners' request for certiorari review of a decision of Florida's Third District Court of Appeal. The Supreme Court refused to hear any Motions for Rehearing. Pursuant to Article V, Section (3)(b)(3), Fla. Const., and Fla. R. App. P. 9.030 (a) (2) (A) (iii), and a line of cases interpreting these provisions, the Supreme Court of Florida refused to hear the Petition because the Third District Court of Appeal did not issue a written opinion but only issued a *per curiam* affirmance of the trial court's order. This decision is not reported. (Petitioners' Appendix—hereinafter referred to as PA-A1).

On October 2, 1984, the Third District Court of Appeal of Florida issued a *per curiam* affirmance, without written opinion, of the trial court's order, citing *Alcime v. Bystrom,* 451 So. 2d 1037 (Fla. 3d DCA 1984. This decision is reported at 455 So. 2d 1348, (Fla. 3d DCA 1984) (PA-A4).

On February 8, 1984, the Circuit Court of the 11th Judicial Circuit, In and For Dade County, Florida, dismissed Petitioners' First Amended Complaint (PA-A5) citing *Juarrero v. McNayr,* 157 So. 79 (Fla. 1963), as controlling the issue *sub judice.* This decision is not reported.

JURISDICTIONAL STATEMENT

This Petition seeks review of the decision of the Third District Court of Appeal of Florida upholding the

denial of homestead tax exemption to Petitioners (PA-A4). The Petitioners sought injunctive and declaratory relief in the Eleventh Judicial Circuit of Florida challenging the denial of Petitioners' application for Florida's homestead tax exemption. Among the allegations set forth in the Complaint were violations of the due process and equal protection clauses of the 14th Amendment, the Supremacy Clause of the Constitution of the United States, and 42 U.S.C. Sections 1981, 1983. The Circuit Court dismissed the case stating that the issue *sub judice* was controlled by the Supreme Court of Florida's decision in *Juarrero v. McNayr,* 157 So. 2d 79 (Fla. 1963) (PA-A5). *Juarrero* was decided more than a decade prior to this court's decisions in *Vlandis v. Kline,* 412 U.S. 441 (1973); *Elkins v. Moreno,* 435 U.S. 647 (1978); *Toll v. Moreno,* 458 U.S. 1 (1982).

On October 4, 1984, Florida's Third District Court of Appeal affirmed *per curiam* the trial court's order of dismissal, without entering a written opinion (PA-A4). Petitioners were thereby precluded from their only grounds for review by the Supreme Court of Florida.

On November 8, 1984, the Supreme Court of Florida dismissed a Petition to Invoke Discretionary Review. The Court also noted its refusal to entertain any Motion for Rehearing (PA-A1). The Supreme Court's dismissal was based on a line of cases interpreting Article V Section (3) (b) (3), Fla. Const., and Fla. R. App. P. 9.030 (a)(2)(A)(iii). Those cases have held that the Supreme Court will not review cases in this area in which the District Court of Appeal enters a *per curiam* affirmance without a written opinion. Petitioners then filed this timely Petition for certiorari.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257 (3)(1982).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioners' claims are based on the equal protection and due process guarantees of the Fourteenth Amendment to the United States Constitution; the Supremacy Clause of the United States Constitution; Article VII, Section 6 of the Florida Constitution; and Sections 196.012, 196.015, 196.031, Florida Statutes. These provisions are set forth below:

CONSTITUTION OF THE UNITED STATES

ARTICLE VI.

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

CONSTITUTION OF THE UNITED STATES, AMENDMENTS

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF THE STATE OF FLORIDA

ARTICLE VII

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

SECTION 196.012, FLORIDA STATUTES (1983)

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(16) "Permanent resident" means a person who has established a permanent residence as defined in subsection (17).

(17) "Permanent residence" means that place where a person has his true, fixed, and permanent home and principal establishment to which, whenever absent, he has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

SECTION 196.015, FLORIDA STATUTES (1983)

196.015 Permanent residency; factual determination by property appraiser.—Intention to establish a permanent residence in this state is a factual determination to be made, in the first instance, by the property appraiser. Although any one factor is not conclusive of the establishment or nonestablishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:

(1) Formal declarations of the applicant.

(2) Informal statements of the applicant.

(3) The place of employment of the applicant.

(4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.

(5) The place where the applicant is registered to vote.

(6) The place of issuance of a driver's license to the applicant.

(7) The place of issuance of a license tag on any motor vehicle owned by the applicant.

(8) The address as listed on federal income tax returns filed by the applicant.

(9) The previous filing of Florida intangible tax returns by the applicant.

SECTION 196.031, FLORIDA STATUTES (1983)

196.031 Exemption of homesteads.—

(1) Every person who has the legal title or beneficial title in equity to real property in this state and

who resides thereon and in good faith makes the same his permanent residence, or the permanent residence of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation.

STATEMENT OF THE CASE

This Petition challenges the State of Florida's blanket denial of homestead tax exemption to all aliens not in possession of a permanent resident card, the so-called "green card". The State's denial is based on the theory that an alien not in posession of the permanent residence visa cannot in good faith declare a permanent residence within the State.

The decision of Florida's Third District Court of Appeal (PA-A4) conflicts with the well-settled doctrine of this Court in *Vlandis v. Kline,* 412 U.S. 441 (1973); *Elkins v. Moreno,* 435 U.S. 647 (1978); *Toll v. Moreno,* 458 U.S. 1 (1982). The District Court of Appeal held that it was bound by a Florida Supreme Court decision, *Juarrero v. McNayr,* 157 So. 2d 79 (Fla. 1963). The Florida Supreme Court, the only state court with the power to re-examine *Juarrero* in the light of *Vlandis, Elkins,* and *Toll,* ruled that it was without jurisdiction to do so (PA-A1). The result is a violation of Petitioners' rights to equal protection and due process, and a violation of the Supremacy Clause of the United States Constitution.

This Petition recognizes the State's authority to create and enforce taxes and does not attempt to challenge the homestead tax exemption or the requirements enumerated within the Statute for an individual to obtain this

benefit. However, this Petition does challenge the State's authority to deny this benefit to aliens in a discrminatory fashion.

Petitioners are black immigrants from Haiti who arrived at Florida's shores more than six years ago (PA-A23, A25). Having fled the political oppression and exploitation of their native land they have struggled to build a new life in Florida. Working long hours, for low pay they have scrimped and saved to fulfill a dream: ownership of their own small home.

In 1980, along with thousands of others who had fled their homelands to seek their dreams in the United States, Petitioners were granted the unique status of Cuban/Haitian Entrants (PA-A31). This status authorized Petitioners and the other predominantly black immigrants from Cuba and Haiti who qualified, to remain in the United States indefinitely. Special provisions were made for federally reimbursing local agencies which were instructed to treat Cuban/Haitian Entrants as permanent residents under color of law and to open social services, schools, and job training programs to them. Employment authorization was extended to all Cuban/Haitian Entrants automatically and all deportation proceedings were halted against them. Until Congress would act to ratify the decision, by directive of then President Jimmy Carter, Petitioners were accepted as permanent residents of the United States.

Since 1978, when Petitioners unequivocally abandoned their previous residence in Haiti, they have made their home in Florida. Petitioners are presently employed, pay taxes to the State of Florida, possess a Florida's drivers license, and own a car registered in Florida. As the final

steps toward establishing their permanent residence, Petitioners were able to purchase a small house in Miami, Florida. Petitioners are not mere transients but have evidenced both a subjective and objective intent to remain permanent residents of the State of Florida (PA-A23, A25). Petitioners fulfill all the criteria for permanent residence as outlined in Section 196.015, Florida Statutes (1983). Their application for homestead tax exemption was denied solely on the basis of their not possessing a permanent resident visa.

In early 1983, Petitioners, along with all other permanent resident homeowners applied for Florida's homestead tax exemption. Petitioners thereby hoped to save what is a substantial sum to them of several hundred dollars in property taxes.

Petitioners' application was denied on the basis that they were not in possession of a lawful permanent resident card (PA-A27). Petitioner's administrative appeal to the Dade County Property Appraisal Adjustment Board was denied on the same grounds (PA-A18).

Subsequently, Petitioners filed suit in the Circuit Court for the Eleventh Judicial Circuit of Florida (PA-A8). Petitioners' suit was dismissed, the trial courts ordering that the issue *sub judice* was controlled by a Florida Supreme Court decision. *Juarrero, supra* (PA-A5).

Petitioners appeal to Florida's Third District Court of Appeal was also dealt with summarily, the court issuing a *per curiam* affirmance, without written opinion, citing *Alcime v. Bystrom,* 451 So. 2d 1037 (Fla. 3d DCA 1984) (PA-A4). *Alcime,* had been decided three months earlier, the court ruling the issue was controlled by *Juarrero, supra* (PA-A29).

Both the trial court and the Court of Appeal found that they were bound by a twenty year old Florida Supreme Court case. That decision, however, conflicts with the now settled doctrine of this Court as enunciated in *Vlandis, Elkins,* and *Toll, supra.* The State of Florida has, thereby, violated Petitioners' rights to due process and equal protection. In addition, the decision violates the Supremacy Clause of the United States Constitution by interfering with Presidential policy permitting Cuban/Haitian Entrants to remain indefinitely in the United States.

Petitioners' Notice to Invoke the Discretionary Review of the Florida Supreme Court was dismissed on November 7, 1984, the Court citing a lack of jurisdiction (PA-A1). The Supreme Court's dismissal was based on a line of Florida cases interpreting Art. V, Section (3) (b) (3), Fla. Const., and Fla. R. App. P. 9.030(a) (2) (A) (iii). Those cases have held that the Florida Supreme Court does not have jurisdiction to review District Court of Appeal orders which *per curiam* affirmed, without opinion, a trial court order. Petitioners were thereby precluded from obtaining a review of the issue by the only court with the capacity to rectify *Juarrero* in light of the more recent decisions of this Court.

The result of the State of Florida's denial of the homestead tax exemption to Petitioners is that a black, low-income family of immigrants must now face a burden of state taxes not imposed on all other permanent residents of the State. The State of Florida has added this stigma of unequal treatment to the already heavy burden which this immigrant family has shouldered.

REASONS FOR GRANTING THIS WRIT

This Court should grant this Petition for Certiorari for three reasons. First, this case is based upon a state court decision that creates a conflict with the well-settled principles of *Elkins v. Moreno,* 435 U.S. 647 (1978), *Vlandis v. Kline,* 412 U.S. 441 (1973) and *Toll v. Moreno,* 458 U.S. 1 (1982). The Third District Court of Appeal of Florida and the lower court, in reaching their decisions, found controlling *Juarrero v. McNayr,* 157 So. 2d 79 (Fla. 1963), which was decided prior to the pertinent federal law.

Second, the lower court, by failing to adhere to well established Constitutional doctrine and Federal law denied a discrete minority of black aliens equal protection and due process of the law and violated the Supremacy Clause of the United States Constitution.

Third, Florida's procedure for invoking the discretionary jurisdiction of the Florida Supreme Court is devoid of any method to correct this recurring and substantial error. In this case Florida's Third District Court of Appeal has held that the issue is controlled by a Florida Supreme Court case, but has issued an opinion which precludes review, thereby denying the Florida Supreme Court the opportunity to reconsider its own decision.

I. This Court Should Grant Certiorari Because The Decision Of Florida's Court Directly Conflicts With This Court's Decisions In Elkins v. Moreno, 435 U.S. 647 (1978), Vlandis v. Kline, 412 U.S. 441 (1973), Toll v. Moreno, 458 U.S. 1 (1982).

This Petition comes to this Court with a record of the State's decision that immigrants, with the status of

Cuban/Haitian Entrants, do not have the legal capacity to form a good faith intent to declare permanent residence in the State of Florida.[1] This determination was based solely on their lack of a permanent resident alien card more commonly called a "green card".

A. The Florida Decision Conflicts with Elkins v. Moreno, 435 U.S. 647 (1978), Because The Florida Rule Does Not Examine The Alien's Specific Status To Determine Whether The Federal Government Has Authorized The Alien To Remain In The United States Indefinitely.

In *Elkins v. Moreno*, 435 U.S. 647 (1978), this Court held that an alien has the legal capacity to establish permanent residence unless the conditions attached to that alien's entry into the country bar that capacity. The Court stated that it is necessary to look beyond the form of an alien's immigration status and examine the substance of a particular status to determine whether conditions placed on the entry bar a claim of permanent residence.

The Florida courts' decision to treat a permanent resident visa as a magic formula without which perma-

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[1] The requirements of the Florida Homestead Tax Exemption are pursuant to Article VII Section 6 of the Florida Constitution which provides that " . . . every person who has the legal or equitable title to real estate and maintains therein the permanent residence of the owner . . . shall be exempt from taxation therein." The exemption was enacted by the Florida legislature as Section 196.031, Florida Statutes (1983).

nent residence is impossible was the same argument, explicitly rejected by this Court, when advanced by the State of Maryland in *Elkins, supra.*

A careful reading of *Elkins* shows that the Moreno family had been unable to establish domicile in Maryland because they were found to be legally incapable of establishing permanent residence in that State.

The University of Maryland policy reviewed by this Court stated: "It is the policy of the University of Maryland to grant in state status for admission, tuition, and charge-differential purposes to United States citizens and to immigrant aliens lawfully admitted for permanent residence in accordance with the laws of the United States. . . . ." *Elkins v. Moreno,* 435 U.S. at 651 (1978).

The policy then provided for other residency requirements and matters to be considered in determining whether domicile was established. Because Maryland officials had considered legal capacity to establish permanent residency a prerequisite to domicile, they denied the Moreno application without considering the other issues. This Court explicitly rejected this interpretation of federal immigration law. The Court held that an alien has the legal capacity to establish permanent residence in the United States *unless* that capacity is barred to the alien by the specific conditions governing the alien's legal entry.

Had the Florida courts followed the rule of *Elkins v. Moreno, supra,* Petitioners and other Cuban/Haitian Entrants would have been granted the homestead tax

exemption. The Petitioner in *Elkins* held a non-immigrant "G" visa, issued under the authority of 8 U.S.C. 1101 (a)(15)(G). Such visas are issued to employees of international organizations recognized by the Secretary of State.

The Supreme Court found that no conditions attached to the entry of the Moreno family with their "G" visa which would bar them from declaring, in good faith, the State of Maryland to be their permanent residence. Following the *Elkins* ruling at least four other categories of non-immigrant visa holders might in good faith have the capacity to declare permanent residence in the United States. *See,* 8 U.S.C. 1101(a)(15)(A), (E), (I), (K).[2]

On June 20, 1980, the Executive Branch of the United States government created an entirely new alien status granting Cubans who entered the country during the per-

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[2] The Immigration and Naturalization Act as amended recognizes thirteen "non-immigrant" categories. 8 U.S.C. 1101(a) (15) (A)-(M). Five of these statuses explicitly condition admittance to the United States with the language " . . . having a residence in foreign country which he has no intention of abandoning. . . ." 8 U.S.C. 1101(a) (15) (B), (F), (H), (J), (M). Under the ruling in *Elkins* holders of these visas do not have the legal capacity to declare in good faith the United States to be their permanent residence.

The conditions attached to the entry of several other categories of non-immigrant aliens, perhaps by implication, deny them the capacity to declare permanent residence in that it is required that they " . . . intend to depart from the United States . . ." at a certain time. The Florida Supreme Court in *Juarrero* decided that the very conditions attached to the entry of a political refugee barred their capacity to declare permanent residence by restricting their right to remain in the United States only to the duration of their need for asylum.

iod April 21 to June 19, 1980, and all Haitians, including Petitioners, who were formally known to the Immigration and Naturalization Service to be in this country on or before June 19, 1980, permission to remain in the United States indefinitely. This date was later extended to October 10, 1980.

An in-house memorandum sent out from the Central Office of INS dated November 10, 1980, mandated the procedure to be followed by INS District Offices. ". . . . All Haitians who were in INS proceedings as of midnight October 10, 1980, will be paroled or granted extended voluntary departure or stay of deportation as appropriate . . . Any O.S.C. (Order to Show Cause) that may have been issued will be cancelled. . ." No exercise of discretion is warranted or allowed in these procedures. The instructions further require the prior appoval of the Regional Commissioner of INS where an O.S.C. is issued to a Cuban or Haitian who is in "proceedings" but "excludable or deportable for other than documentary reasons" (PA-A32).

Thus, other than for those Cubans and Haitians who are found deportable or excludable for "other than documentary reasons", such as the conviction of a crime, the Executive Order has conferred a status which permits Petitioners to remain in the United States indefinitely. The Presidential Directive is similar to a statute designating a non-deportable class.

Indeed, far from excluding the abandonment of foreign residence, the Cuban/Haitian Entrant status presumed such abandonment. In an implementing directive dated June 27, 1980, addressed to "State administrative

and other Interested Agencies and Organizations" the Social Security Administration said of the Cuban/Haitian Entrants: ". . . They are to be considered to be permanently residing in the United States under the color of law and meet the requirements of 45 CFR 233.50" (Directive of June 27, 1980, p. 3) (PA-A35). This same message was reiterated at page 2 of a telegraphic message of the same date (PA-A38).

The Cuban/Haitian Entrant program has a unique and special character in the context of our immigration laws. It is not defined in any Act of Congress or regulation. It was created by Presidential directive in response to a critical political situation. While no Act or regulation defines it, the Executive policies expressed and the status created have the full force and effect of law. *U.S. v. New Orleans Public Service, Inc.*, 553 F. 2d 459 (5th Cir., 1977). The purpose of the program, as announced and conceived by the Executive branch, was to provide a specified class of aliens with the right to remain in the United States. From the inception of the program, the Executive branch expressed significant foreign policy and other interests in keeping this large group of people in the country on a permanent basis. *See,* Victor Palmieri, U.S. Coordinator for Refugee Affairs, *Cuban/Haitian Arrivals in U.S.,* Current Policy No. 193, June 20, 1980 (PA-A40); *Interpreter Releases Bulletin,* Vol. 57, No. 25, June 30, 1980 (PA-A48).

The plan from the beginning was to seek legislation to regularize the status of the Cuban/Haitian Entrants to that of lawful permanent residents. Thus, Victor Palmieri, in his June 20, 1980, press release spoke of the in-

tent to "provide for conversion to permanent resident alien status after two years" and to "resettle those whom common decency compels us to receive" (PA-A40). It was left to Congress to ultimately determine the exact parameters of the Cuban/Haitian Entrant status and the final eligibility requirements.

Even ignoring the explicitly expressed intent to grant these aliens the right to establish permanent residence, Cuban/Haitian Entrants have such a capacity. This Court in *Elkins v. Moreno,* 435 U.S. 647 (1978) ruled that any alien, absent conditions attached to their entry barring the capacity to declare permanent residence, has the legal capacity to declare in good faith that he intends to make the United States his permanent residence. No conditions are attached to the Cuban/Haitian Entrant status which would bar Petitioners' capacity to declare permanent residence in Florida under the *Elkins* ruling.

Florida's efforts to divide the world into those who can in good faith declare permanent residence and those who cannot, based solely on the criteria of possession of a permanent residence visa or "green card" is invalid and runs contrary to the holding of *Elkins, supra.* As indicated by this Court in *Elkins,* Florida's "green card" rule also violates the clear holding of this Court in *Vlandis v. Kline,* 412 U.S. 441 (1973).

B. The Florida Decision Conflicts With Vlandis v. Kline, 412 U.S. 441 (1973), Because Florida Has Established An Irrebutable Presumption That Only Aliens With "Green Cards" Can Permanently Reside In The State.

In *Vlandis v. Kline,* 412 U.S. 441 (1973), this Court held that a Connecticut statute was unconditional as vio-

lative of due process, which provided that in determining residency for tuition purposes, an unmarried student was a non-resident if his legal address was outside of Connecticut for any part of the one-year period immediately preceding his application for admission, and that a married student was a non-resident if his legal address was outside of Connecticut at the time of his application for admission.

In holding the Connecticut statute to be unconstitutional the Court stated:

> . . . the appellees attack Connecticut's irreversible and irrebuttable statutory presumption that because a student's legal address was outside the State at the time of his application for admission or at some point during the preceding year, he remains a nonresident for as long as he is a student there. This conclusive presumption, they say, is invalid in that it allows the State to classify as "out-of-state students" those who are, in fact, bona fide residents of the State. The appellees claim that they have a constitutional right to controvert that presumption of nonresidence by presenting evidence that they are bona fide residents of Connecticut. The District Court agreed: "Assuming that it is permissible for the state to impose a heavier burden of tuition and fees on non-resident than on resident students, the state may not classify as 'out of state students' those who do not belong in that class." 346 F. Supp. at 528. We affirm the judgment of the District Court.
>
> Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments. In *Heiner v. Donnan*, 285 U.S. 312, the Court was faced with a constitutional challenge to a federal

statute that created a conclusive presumption that gifts made within two years prior to the donor's death were made in contemplation of death, thus requiring payment by his estate of higher tax. In holding that this irrefutable assumption was so arbitrary and unreasonable as to deprive the tax-payer of his property without due process of law, the Court stated that it had "held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." *Id.*, at 329. (Citations omitted). *Vlandis, supra* at 455, 456.

After this Court's decision in *Elkins v. Moreno,* 435 U.S. 647 (1978), the presumption that only aliens in possession of a permanent resident status or "green card" have the legal capacity to form a good faith intent to permanently reside in Florida is just as unreasonable and arbitrary as were the presumptions in *Vlandis* and *Heiner.* Florida's courts in Petitioners' case have decided this presumption is absolutely irrebuttable. Petitioners were offered no opportunity to rebut the presumption. They tendered extensive evidence that Florida was their permanent residence (PA-A23, A25). All of this evidence was ignored.

C. The Decisions Of The Courts Of Florida Directly Conflict With The Decision Of Toll v. Moreno, 458 U.S. 1 (1982), Because It Imposes On Petitioners An Ancillary Burden Not Contemplated By The Presidential Order Creating The Cuban/Haitian Entrant Status, And Frustrates The Executive Policy Implicit In That Order.

In light of the Presidential Order granting Cuban/Haitian Entrants the right to remain permanently in the

United States, the decision of the courts of Florida to deny Petitioners the opportunity to declare a permanent residence in the State, and thereby to deny their application for homestead tax exemption, solely on the basis of their not being in possession of a permanent resident visa, amounts to an ancillary burden not contemplated by the Executive Order, and frustrates executive policy.

In *Toll, supra,* this Court held the University of Maryland's policy of denying domiciled, non-immigrant aliens holding G-4 visas in-state status, and thereby denying them preferential treatment for tuition fees, to be invalid under the Supremacy Clause.

As Congress had allowed G-4 aliens to enter the country on terms permitting the establishment of domicile in the United States, this Court held it an impermissible burden for a state to deny that alien certain rights attendant to a state domicilliary. *Toll, supra,* at 14.

Petitioners, Cuban/Haitian Entrants have by Presidential Order been granted the right to remain indefinitely in the United States. The State of Florida's blanket determination that only those aliens in possession of a permanent resident visa can make a good faith declaration of permanent residence in the State, thereby qualifying for the homestead tax exemption is an unconstitutional violation of the Supremacy Clause. This Court should grant certiorari to resolve this conflict.

II. Florida's Failure To Adhere To Well Established Doctrines Of This Court Denied Petitioners Equal Protection Of The Laws And Due Process Of Law And Violated The Supremacy Clause Of The United States Constitution.

Petitioners, black immigrants of Haitian national origin, have been subjected to invidious discrimination by

Florida's decision. Petitioners, as Cuban/Haitian Entrants, belong to a large class of predominantly black aliens, against whom the Florida decision impacts directly and totally.

A. The Florida Decision Deprives Petitioners of Equal Protection Of The Laws By Treating Them Differently From Other Permanent Homeowners Solely Because Of Their Alien Status.

When aliens are singled out and subjected to special treatment with regard to their status, a suspect class is created. The homestead tax exemption was designed to encourage new residents to the State. Article VII, Section 6 of the Florida Constitution provides that ". . . every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner . . . shall be exempt from taxation thereon. . . ."

The foregoing homestead tax exemption has been enacted by the legislature as Section 196.031, Florida Statutes (1983), and is effective as enacted.

Section 196.012, Florida Statutes defines permanent resident and permanent residence as follows:

> (16) Permanet resident means a person who has established a permanent residence as defined in subsection (17).
>
> (17) Permanent residence means that place where a person has his true, fixed and permanent home and principal establishment to which, whenever absent, he has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state

or country, it is presumed to continue until the person shows that a change has occurred.

At no point does the Florida Constitution or the statute require that an alien "permanent resident" of Florida for homestead tax exemption purpose be in possession of a U.S. immigration permanent residence visa, Form I-151, or the so-called "green card".

Florida's court-created presumption that only those aliens with the "green card" can be permanent residents, denied Petitioners equal protection. The State's initial decision did not include an evaluation of the factors enumerated in Section 196.015, Fla. Stat.[3] (1983) which aid the Property Appraiser in making the determination of an individual's capacity of declaring a permanent residence in the State of Florida. The Petitioner's submitted affidavits which clearly demonstrated their good faith intent to declare a permanent residence in the State

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[3] The factors enumerated are:

(1) Formal declarations of the applicant.
(2) Informal statements of the applicant.
(3) The place of employment of the applicant.
(4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.
(5) The place where the applicant is registered to vote.
(6) The place of issuance of a driver's license to the applicant.
(7) The place of issuance of a license tag on any motor vehicle.
(8) The address as listed on federal income tax returns filed by the applicant.
(9) The previous filing of Florida intangible tax returns by the applicant. Laws 1981, c. 81-219, Section 2, eff. Jan. 1, 1982.

of Florida and undisputably met the requirements of Section 196.015, Florida Statutes (1983) (PA-A23, A25). The refusal to consider the very factors other applicants, including "green card" holders, can use to prove their "good faith intent" discriminates against these aliens and denies them equal protection. This attempt to treat Cuban/Haitian Entrants differently denied them equal protection of the law. No legitimate public purpose or compelling government interest exists to allow for this unequal treatment.

The result is that Petitioners have been and will be forced to pay property taxes at a higher rate than American citizens and resident aliens with "green cards", who may have resided in Florida for a shorter period of time and have less real claim to permanent residency. There can be no legitimate state purpose served, nor compelling state interest satisfied, by denying a homestead tax exemption, to state "residents" who have been living here for many years, intend to remain for the foreseeable future, pay taxes in every form, solely because of their Cuban/Haitian Entrant status.

Absent such legitimate state purpose and compelling interest, discrimination against aliens such as Petitioners falls far short of the standards this Court has set. *Graham v. Richardson,* 403 U.S. 365 (1971), *Sugarman v. Dougall,* 413 U.S. 634, 642 (1973). *In re Griffiths,* 413 U.S. 717, 721(1973); *Examining Board v. Flores De Otero,* 426 U.S. 572, 601-02 (1976); *Nyquist v. Mauclet,* 432 U.S. 1 (1977).

B. The Florida Decision Deprives Petitioners Of Due Process Of The Law By Creating An Arbitrary And Irrebuttable Presumption To Their Detriment.

As this Court noted in a different context, constitutionally protected interests in property are "normally

' . . . created and their dimensions are defined' by an independent source such as state statutes or rules entitling the citizen to certain benefits", *Goss v. Lopez,* 419 U.S. 565 (1975). The Florida homestead tax exemption is created by Article VII Section 6 of the Florida Constitution, and its parameters are further defined by Section 196.031, Florida Statutes (1983), and the various regulations promulgated thereunder. The Florida homestead tax exemption represents a significant property interest to Florida homeowners, including Petitioners.

Petitioners cannot be deprived of their property interest without being afforded due process of law, including an opportunity to be heard, *Goldberg v. Kelly,* 397 U.S. 254 (1970).

Florida has explicitly recognized this and has provided a framework of administrative hearings and court review before the homestead tax exemption can be finally denied. As mentioned above, Florida has enumerated various methods of establishing permanent residency.

At the same time, however, the Florida courts through their decisions have elevated the possession of a "green card" to a *sine qua non* for the legal capacity to become a resident of the state. An absolute and irrebuttable presumption has been established that only "green card" holders are capable of becoming permanent residents. This arbitrary and absolute presumption effectively deprives Petitioners of due process.

Since this Court's decision in *Elkins,* it has been clear that the permanent residence visa or "green card" is but

one factor to be taken into consideration in determining whether an alien is permitted to reside in the United States permanently. An alien possessing such a visa would clearly be authorized to establish permanent residence. It is also true that numerically the majority of aliens who are authorized to remain permanently in the country are "green card" holders. There are, nonetheless, many aliens who have been authorized to reside permanently in the United States, but given statuses other than that of a "green card" holder. Petitioners, as Cuban/Haitian Entrants, are in exactly such a category of aliens.

Although Petitioners were allowed hearings and court reviews, these were mere formal exercises, so far as they were concerned, once they failed to produce a "green card". Since other classes of aliens than those who have been granted "green cards" have been authorized to reside in the U.S. permanently, aliens must be afforded an opportunity to prove that they have been so authorized in order to be afforded minimal due process.

There is no provision in Florida which allows Petitioners or other aliens without permanent resident visas to offer evidence of their capacity to become permanent residents. This Court examined similar presumptions in *Vlandis v. Kline,* 412 U.S. 441 (1973). The irrebuttable nature of this presumption renders the opportunity to be heard a mere form, devoid of substance. By applying the presumption to Petitioners, Florida deprived them of a valuable property interest without affording them due process of law.

C. The Florida Courts' Failure To Adhere To Well-Established Doctrine Of This Court Vio-

lates The Supremacy Clause Of The United States Constitution.

In *Toll v. Moreno,* 458 U.S. 1 (1982), the United States Supreme Court held violative of the Supremacy Clause a state university's denial of "in-state" status to domiciled, non-immigrant aliens.

The Court noted the Federal government's preeminent role with respect to the regulation of aliens within our borders, and the substantial limitations which have been imposed upon the states in making classifications based upon alienage. *Toll, supra,* at 10.

Moreno was a G-4 alien, whom Congress had allowed to enter the country on terms permitting the establishment of domicile within the United States. Moreover, the Federal government had taken various affirmative steps to encourage organizations employing G-4 visa holders to locate within the United States.

The Supreme Court held that the state of Maryland's decision to bar G-4 aliens from acquiring "in-state" status, despite Congress' explicit decision not to bar them from acquiring domicile, solely on account of their federal immigration status, was an ancillary burden not contemplated by Congress, frustrated Federal policy, and was therefore in violation of the Supremacy Clause to the United States Constitution.

Petitioners, Liphete and Mitial, are Cuban/Haitian Entrants, beneficiaries of a Presidential order granting them the right to remain permanently in the United States. By failing to allow any aliens who do not possess "green cards" the possibility of establishing permanent residence in the state, Florida has violated the Supremacy Clause

of the United States Constitution. The Federal government has clearly preempted the field of deciding which classes of aliens may enter the country and establish permanent residency in the United States.[4]

No individual state has the power to deny any class of aliens, permitted by the Federal government to take up permanent residency in the United States, the capacity to reside permanently in that state. *Toll v. Moreno*, 458 U.S. 1 (1982).

III. Because Of Florida's Procedure For Invoking The Discretionary Jurisdiction Of The Supreme Court There Exists No Method For Correcting A Recurring Unconstitutional Error.

In 1963, the Florida Supreme Court decided *Juarrero v. McNayr*, 157 So.2d 79 (1963).

In 1984, The Third District Court of Appeal, basing its decision on *Juarrero*, held that a Haitian immigrant to the United States who did not possess a permanent resident visa could not qualify for Florida's homestead tax ex-

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[4] This Court's cases have long recognized the pre-eminent role of the Federal government with respect to regulation of aliens within the borders of the United States. *Toll v. Moreno*, 458 U.S. 1 (1982) at 20 citing to *Mathews v. Diaz*, 426 U.S. 67 (1976); *Graham v. Richardson*, 403 U.S. 365. 377-380 (1971); *Takahashi v. Fish & Game Commn*, 334 U.S. 410, 418-420 (1948); *Hines v. Davidowitz*, 312 U.S. 52, 62-68 (1941); *Truax v. Raich*, 239 U.S. 33, 42 (1915). The power derives from various sources including Article 1 Section 8 Clause 4, and Clause 3 citing *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936), *Mathews v. Diaz*, at 81 n. 17, *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-589 (1952). "Not surprisingly therefore, new cases have also been at pain to note the substantial limitations upon the authority of the States in making classification based upon alienage."

emption. *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984) (PA -A29). *Alcime* was not appealed to the Florida Supreme Court. *Alcime* thereby became binding precedent in the Third District of Florida.

The Third District Court of Appeal affirmed *per curiam,* without written opinion, the trial court's denial of Petitioners' application for homestead tax exemption, citing *Alcime* (PA-A4). Petitioners were thereby precluded from obtaining review by the Supreme Court of Florida. Petitioners' attempt to invoke the discretionary jurisdiction of the Florida Supreme Court was dismissed because of lack of jurisdiction[5] (PA-A1).

Most Haitian immigrants, and more specifically most Cuban/Haitian Entrants, reside in Florida's Third District. Any future attempts by members of this class to apply for homestead tax exemption would be summarily dismissed by the trial courts on the basis of *Alcime.* Appeals to the Third District would receive *per curiam* affirmances without written opinion, again on the basis of *Alcime.* No further appeal would lie to Florida's Supreme Court.

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[5] The Florida Supreme Court's dismissal of Liphete et al.'s Petition to invoke the Court's discretionary review was based on a line of Florida cases which have held that the Supreme Court does not have jurisdiction to hear cases pursuant to Fla. R. App. P. 9.030(a) (2) (A), and Art. V, (3) (b) (3), Fla. Const., in which the District Court of Appeal issued a *per curiam* affirmance without a written opinion. *Jenkins v. State,* 385 So. 2d 1356 (Fla. 1980); *Dodi Publishing Co. v. Editorial America, S.A.,* 385 So. 2d 1369 (Fla. 1980); *Robles Del Mar Inc. v. Town of Indian River Shores,* 385 So. 2d 1371 (Fla. 1980).

Petitioners, as all future like-situated aliens, are effectively caught in a trap. The Florida Supreme Court, the only court with the power to rectify *Juarrero* and *Alcime*, in the light of *Elkins*, *Toll*, and *Vlandis*, is precluded from reviewing those decisions by the 1980 Amendments to Florida's State Constitution.

The question of whether the decision below is in conflict with this Court's well-settled doctrine, as represented by *Elkins*, *Toll*, and *Vlandis*, and if so whether such violates Petitioners' equal protection and due process rights, and violates the Supremacy Clause, can therefore, only be answered by this Court.

CONCLUSION

The issues presented are important ones. They impact on the lives of thousands of immigrants who have sought a new life in the United States. Should the decision, of which review is sought, be allowed to stand, the State of Florida, and by implication all other states, will be free to invidiously discriminate by denying lawful alien residents state benefits available to all other state residents. Settled doctrine of this Court holds that such discrimination cannot be allowed.

For these reasons, this Court should grant certiorari.

Respectfully submitted,

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*Counsel of Record

APPENDIX

SUPREME COURT OF FLORIDA

Wednesday, November 7, 1984
Case No. 66,121
District Court of Appeal, 3d District—No. 84-590

LOUIS LIPHETE, et al.,

Petitioners,

v.

MERRITT STIERHEIM, et al.,

Respondents.

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. *Dodi Publishing Co. v. Editorial America, S.A.*, 385 So.2d 1369 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

A True Copy
TEST:

TC
cc: Hon. Louis J. Spallone, Clerk
Hon. David L. Levy, Judge
Hon. Richard P. Brinker, Clerk

John R. Greenwood, Esquire
Daniel A. Weiss, Esquire
Barbara Staros Harmon, Esquire

(SEAL)

Sid J. White
Clerk, Supreme Court
by: Debbie Causseaux
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
OF THE THIRD DISTRICT COURT OF FLORIDA

CASE NO. 84-590

LOUIS LIPHETE, and
DIANE MITIAL,

Petitioners,

vs.

MERRITT STIERHEIM, et al.,

Respondents.

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

Florida Bar No. 317446

Notice is given that Louis Liphete and Diane Mitial, Petitioners, invoke the discretionary jurisdiction of the Supreme Court to review the decision of this Court rendered October 2, 1984. The decision expressly affects a class of constitutional or state officers.

Respectfully submitted,

Haitian American Community Association
of Dade (HACAD) Inc. Service Center

By /s/ JOHN R. GREENWOOD, ESQ.
Attorney for Petitioners
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Miami, Florida 33127
(305) 751-3429

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 31st day of October, 1984, to Daniel A. Weiss, Assistant County Attorney, 1626 Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130; and to Barbara Staros Harmon, Assistant Attorney General, Dept. of Legal Affairs, The Capitol,

Room LL04, Tallahassee, Florida, 32301, Attorneys for Respondents.

By /s/ JOHN R. GREENWOOD, ESQ.
Attorney for Petitioners

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1984
CASE NO. 84-590

LOUIS LIPHETE and DIANE MITIAL,

Appellants,

vs.

MERRITT STIERHEIM, as County Manager for Dade County, Florida; FRANKLIN BYSTROM, as Property Appraiser for Dade County, Florida; and P. RANDY MILLER, as Director of the Department of Revenue for the State of Florida,

Appellees.

Opinion filed October 2, 1984.

An Appeal from the Circuit Court for Dade County, David L. Levy, Judge.

John R. Greenwood and Jonathan Thiele and Ira Kurzban, for appellants.

Jim Smith, Attorney General and Barbara Staros Harmon, Assistant Attorney General; Robert A. Ginsburg, County Attorney and Daniel A. Weiss, Assistant County Attorney, for appellees.

Before BARKDULL and PEARSON, DANIEL and FERGUSON, JJ.

PER CURIAM.

Affirmed. *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984).

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 83-38353 (09)

LOUIS LIPHETE and DIANE MITIAL,

Plaintiffs,

vs.

MERRITT STIERHEIM, as County Manager for Dade County, Florida, et al.,

Defendants.

ORDER GRANTING MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

THIS CAUSE came before the Court on February 8, 1984 pursuant to notice on Defendants' motion to dismiss, and the Court having considered Plaintiffs' first amended complaint, having heard argument of counsel, having reviewed the memoranda prepared by the adverse parties, being adequately advised concerning the applicable authorities, concludes:

1. That the touchstone of Florida Statutes implementing the Article VII, Section 6, Florida Constitution, homestead exemption from ad valorem taxation is the "[i]ntention to establish a permanent residence in this state." Section 196.015, Florida Statutes.

2. That the matter *sub judice* is controlled by the decision of the Supreme Court of Florida in *Juarrero v. McNayr*, 157 So.2d 79 (Fla. 1963), where the Court reasoned:

> It is true that a resident of another state in this country may abandon residence in that state, come

> to Flor[illegible]a, purchase a home, reside in it, and declare it to be his permanent residence and become entitled to the homestead exemption provided by Section 7, Article X of our Constitution. Such person must make such declaration "rightfully" and in "good faith." This might also be true in the case of one from another country, who is in this country with a permanent resident visa. Such persons have the freedom and right with certainty to make and declare a bona fide intention of permanent residence in the home owned and located in this state. This is not so, however, in the case of a citizen and former resident of a foreign country who is here under the authority of nothing more than a temporary visa, because such person has no assurance that he can continue to reside in good faith for any fixed period of time in this country. Consequently, we hold he cannot "legally," "rightfully" or in "good faith" make or declare an intention which he has no assurance he can fulfill or carry out because of the temporary nature of the visa. In other words, he does not have the legal ability to determine for himself his future status and does not have the ability legally to convert a temporary residence into a permanent home.

Id. at 81. Quoted with approval on a certified question of law, *Matter of Cooke,* 412 So.2d 340, 343 (Fla. 1982), adopted per curiam by the United States Court of Appeals, 683 F.2d 130 (5th Cir. 1982)

3. That the Plaintiffs are alleged to be "Haitian immigrants lawfully admitted to the United States as parolees as especially applied to Cuban-Haitian Entrants" (First Amended Complaint paragraph 4) who do not have "permanent resident alien status" (*id.* paragraph 34). As such, Plaintiffs are legally incapable of declaring a Florida home their permanent residence.

4. That on the facts alleged, Plaintiffs' legal incapacity to declare themselves permanent residents of the State of Florida precludes their stating a cause of action for homestead exemption from ad valorem taxation. It is therefore

ORDERED AND ADJUDGED:

1. That Defendants' motion to dismiss is granted;

2. That Plaintiffs' First Amended Complaint, is hereby dismissed with prejudice.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 16th day of February, 1984.

/s/ David L. Levy
CIRCUIT JUDGE

Copies furnished to:

Barbara Staros Harmon, Esq.
Daniel A. Weiss, Esq.
John R. Greenwood, Esq.

IN THE CIRCUIT COURT FOR THE
11TH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 83-38353

LOUIS LIPHETE and DIANE MITIAL,

Plaintiffs,

vs.

MERRITT STIERHEIM, as County Manager for Dade County, Florida; FRANKLIN B. BYSTROM, as Property Appraiser for Dade County, Florida; and P. RANDY MILLER, as Director of the Department of Revenue for the State of Florida,

Defendants.

FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. This is an action for injunctive and declaratory relief alleging that the Defendants' denial of Plaintiffs' homestead tax exemption benefits is in violation of Sections 196.012 (17), 196.015, 196.031, 196.051, Florida Statutes (1981), and alleging that the Defendants' denial of Plaintiffs' homestead tax exemption benefits because they are not in possession of a permanent resident alien card is unconstitutional as violative of 42 U.S.C. § 1981, 42 U.S.C. § 1983, the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, and Article 1 § 8 Clause 4 of the Constitution of the United States. By this action, Plaintiffs seek a declaration that they are entitled to a homestead tax exemption, and seek to enjoin the collection of taxes in the amount of said homestead tax exemption.

JURISDICTION

2. This action for declaratory and injunctive relief is brought under Chapter 86, Florida Statutes as required by § 196.151 Florida Statutes (1981).

PLAINTIFFS

3. Plaintiffs Louis Liphete and Diane Mitial own and reside in their home at 100 NW 75th Street, Miami, Dade County, Florida. They have resided in the State of Florida since March 29, 1978. They have owned and resided in their home at the above described address from November, 1982, to date.

4. Plaintiffs, Louis Liphete and Diane Mitial are Haitian immigrants lawfully admitted to the United States as parolees as especially applied to Cuban/Haitian Entrants, and are authorized by Executive policy to remain in the United States and to continue to reside, in good faith, permanently in this country.

DEFENDANTS

5. Defendant, Merritt Stierheim, is the County Manager of Dade County, Florida, and is charged with the duties and functions of tax assessor, pursuant to Section 8A of the Charter of Dade County, Florida and Section 2-69 of the Dade County Code.

6. Defendant, Franklin B. Bystrom, is the Property Appraiser for Dade County, Florida, charged with enforcement and administration of all tax exemptions on real property and specifically that exemption known as the homestead exemption.

7. Defendant, P. Randy Miller, is the Director of the Department of Revenue of the State of Florida, and pursuant to § 20.21, Florida Statutes (1981) is charged with the management and enforcement of the fiscal and taxation affairs of the State of Florida, including supervision of County Tax assessments.

FACTUAL ALLEGATIONS

8. Article 7, Section 6 of the Florida Constitution as revised in 1968 and subsequently amended provides that:

> (a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependant upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

9. Section 196.051 Florida Statutes (1981) provides the definition for permanent resident as applied to the homestead exemption and reads as follows:

> The words "resident", "residence", "permanent residence", "permanent home" and those of like import, shall not be construed so as to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his home to the exclusion of all other places where he may, from time to time, temporarily reside.

10. Although Plaintiffs are eligible for a homestead tax exemption and satisfy all the requirements for said exemption, the Property Appraiser, and the Property Appraisal Adjustment Board, have denied the homestead tax exemption to Plaintiffs.

11. Plaintiffs, Louis Liphete and Diane Mitial pay state and federal taxes in Florida. Plaintiff Louis Liphete possesses a Florida Operators License and his car is registered and titled in Florida. Plaintiffs are employed in Florida. Plaintiffs have made formal statements by sworn affidavit that they intend to make their permanent home in Florida.

12. Plaintiffs are refugees from their native land and have no present intent to return to Haiti and no intent to live anywhere else other than the State of Florida.

13. Plaintiffs Louis Liphete and Diane Mitial have no residence other than their home which they own and in which they live.

14. Plaintiffs Louis Liphete and Diane Mitial, as homeowners, are bona fide residents of Florida and have satisfied all the requirements for a homestead exemption in Florida.

15. Plaintiffs Louis Liphete and Diane Mitial, on or before March 1, 1983, filed their application for a homestead tax exemption, with the Property Appraiser for Dade County, Florida.

16. On or about May 13, 1983, Plaintiffs Louis Liphete and Diane Mitial's application was denied and the reason for denial was "Failed to present permanent Visa

(resident) card". (A copy of said denial is attached hereto and made a part hereof as Plaintiffs' Exhibit No. 1)

17. On or about July 19, 1983, a hearing was held before the Property Appraisal Adjustment Board at which time the Special Master, Peggy M. Fisher, received the sworn affidavits of Plaintiffs and heard argument of counsel for Plaintiffs.

18. On or about August 15, 1983, the County Attorney for Metro Dade submitted to the Special Master a Memorandum of Law in support of the Dade County Property Appraiser's denial of homestead exemption to Plaintiffs. (A copy of said Memorandum is attached hereto and made a part hereof as Plaintiffs' Exhibit No. 2.)

19. On or about August 26, 1983, Counsel for Plaintiffs submitted to the Special Master a Memorandum of Law in response to the Memorandum submitted by the County Attorney. (A copy of this Memorandum is attached hereto and made a part hereof as Plaintiffs' Exhibit No. 3).

20. On or about October 14, 1983, by written decision the Special Master found that Plaintiffs satisfied all the criteria for homestead exemption except for their lack of a permanent resident Visa and that "Regardless of the Special Master's views on these issues, the Master is bound by . . . . the Florida Supreme Court", and thereby denied Plaintiffs petition. (A copy of the decision of the Special Master is attached hereto and made a part hereof as Plaintiffs' Exhibit No. 4.)

21. Plaintiffs have exhausted all their administrative remedies.

22. As a result of the state's denial of Plaintiffs request for homestead tax exemption, granted to all other residents of Florida, Plaintiffs must pay a higher proportional share of real property taxes than do other residents.

FIRST CAUSE OF ACTION

23. Defendants are not entitled to deny state benefits because of Plaintiffs' alien status.

24. The denial of the benefits of the homestead tax exemption, based solely on the state's interpretation of the significance of the immigration status of Plaintiffs and on the state's interpretation of Executive Policy regarding Cuban-Haitian entrants interferes with Executive and congressional objectives for the regulation of immigration and is an unlawful exercise of state power in an area preempted by the Federal Government in violation of Article 1 Section 8, Clause 4 and the Supremacy Clause of the Constitution of the United States and 42 U.S.C. Section 1981 and 42 U.S.C. Section 1983.

25. Plaintiffs have retained attorneys to litigate this cause and are entitled to the award of a reasonable attorney's fee.

SECOND CAUSE OF ACTION

26. Plaintiffs reallege all the allegations of paragraphs 1 through 25 above as if fully set forth herein.

27. For the purposes of determining residency as defined by Sections 196.012(17), 196.015, and 196.051 Florida Statutes (1981), the state is impermissibly creating two classes of citizens, the first consisting of citizens and

permanent resident aliens, and the second consisting of aliens lawfully present in the United States under color of law. Although their indicia of permanent residence pursuant to Sections 196.015, and 196.031 Florida Statutes (1981) may be identical, the state has imposed an additional burden on the second class, not reasonably related to the question of permanent residence for state tax purposes.

28. Setting up classes identical in all respects save the perceived immigration status of the second class, to the benefit of the first class and the detriment of the second, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. Secion 1981 and 42 U.S.C. Section 1983.

THIRD CAUSE OF ACTION

29. Plaintiffs reallege all the allegations of paragraphs 1 through 28 above as if fully set forth herein.

30. The denial of a homestead tax exemption interferes with the right to travel guaranteed Plaintiffs by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. § 1981 and 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

31. Plaintiffs reallege all the allegations of paragraphs 1 through 30 above as if fully set forth herein.

32. Plaintiffs are bona fide residents of the State of Florida.

33. At the hearing held before the Property Appraisal Adjustment Board on August 19, 1983, the Plaintiffs filed affidavits plainly indicating that they have the intention to be permanent residents of the State of Florida. Plaintiffs also filed copies of the Executive policy granting them permission to remain in the United States on a permanent basis.

34. Defendants, however, have created a permanent irreversible and irrebuttable presumption that an alien who does not have permanent resident alien status with INS, cannot be a resident of the State of Florida for homestead tax exemption purposes.

35. Defendants' presumption is not necessarily true.

36. The Plaintiffs have a constitutional right, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, to controvert that presumption of non-residence; and when they controvert that presumption, to have their application granted.

37. Defendants' actions violate Plaintiffs' rights, as guaranteed by 42 U.S.C. § 1981, 42 U.S.C. § 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

FIFTH CAUSE OF ACTION

38. Plaintiffs reallege all the allegations of paragraphs 1 through 37 above as if set forth fully herein.

39. The action of Defendants in denying the homestead tax exemption to Plaintiffs despite their satisfaction of all the requirements of said exemption is an un-

lawful taking of Plaintiffs' property in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

SIXTH CAUSE OF ACTION

40. Plaintiffs reallege all the allegations of paragraphs 1 through 39 as if set forth fully herein.

41. Plaintiffs are bona fide permanent residents of the State of Florida and are entitled to homestead tax exemption benefits.

42. Defendants' action in denying homestead tax exemption benefits to Plaintiffs is in violation of Sections 196.012(17), 196.015, 196.031, and 196.051, Florida Statutes (1981).

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully pray as follows:

a. That this Court enter a declaratory judgment, declaring that the denial of Plaintiffs' homestead tax exemption benefits because they are not in possession of a permanent resident alien card is unconstitutional as violative of Article 1 Section 8 Clause 4, the Supremacy Clause of the Constitution of the United States, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, and violates Plaintiffs' right pursuant to 42 U.S.C. Sections 1981 and 1983.

b. That this Court enter a declaratory judgment declaring that Plaintiffs are permanent residents of the State of Florida and are entitled to homestead tax exemption under the Florida Constitution and applicable statutes.

c. That this Court enjoin the Defendants from collecting tax on the portion of Plaintiffs' property exempted by the homestead tax exemption.

d. Reimbursement of the costs of this suit.

e. Award Plaintiffs a reasonable attorneys' fee.

f. Such other and further relief as this Court deems proper.

Respectfully submitted,

Haitian American Community Association
of Dade (HACAD), Inc. Service Center
/s/ John R. Greenwood, Esq.
Jonathan Thiele, Esq.
Attorneys for Plaintiffs
5901 NW 2nd Avenue
Miami, Florida 33127
(305) 751-3429

Ira Kurzban, Esq.
of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing First Amended Complaint was mailed this 16 day of November, 1983, to P. Randy Miller, Room 102, Carlton Building, Tallahassee, Florida 32301; Franklin B. Bystrom, Property Appraiser, 140 West Flagler Street, Room 1004, Miami, Florida 33130; and, Merritt Stierheim, County Manager, 73 West Flagler Street, Room 911, Miami, Florida 33139.

By /s/ John R. Greenwood, Esq.
Attorney for Plaintiffs

SEQUENCE #10

SPECIAL MASTERS FINDINGS OF FACT
CONCLUSIONS OF LAW
RECOMMENDATIONS TO
PROPERTY APPRAISAL ADJUSTMENT BOARD
L-E-G-A-L I-S-S-U-E-S

.811. ———
01-3112-44-0010-5

LIPHETE LOUIS
LOUIS LIPHETE
100 NW 75TH ST
MIAMI FLA 33150

PROPERTY ADDRESS 100-02 N.W. 75 ST.
DATE 7/19/83 TIME 8:30 ROOM #B
TYPE PROP:——— ZONING———
— HOMESTEAD —AGRICULTURE —PERSONAL PROPERTY —OTHER ———————

1983 TAXABLE TOTALS—PRELIMINARY TAX ROLL VALUATION—*BEFORE* APPLYING EXEMPTIONS—$27,054; EXEMPTIONS APPLIED—HOMESTEAD EX. $ -0-; *AFTER* EXEMPTIONS ARE DEDEDUCTED—$27,054.

FINDINGS OF FACT

	YES	N/A	NO	(N/A . . . Not Applicable)
a	✓			Taxpayer's application for exemption was filed (received) on/or before March 1, 1983.
b		✓		Taxpayer's property used for bona fide agricultural purposes.
c		✓		Taxpayer's failure to file on/or before March 1, 1983 was due to a condition which disabled him or kept him from hav- others file for him.
d	✓			Taxpayer had legal, or equitable title of property on January 1, 1983.
e			✓	Taxpayer resided and made property his permanent home on January 1, 1983.
f			✓	Taxpayer's legal or natural dependents resided on property on January 1, 1983.
g		✓		Taxpayer's submitted required evidence of Total & Permanent Disability.
h		✓		Taxpayer, a veteran, was honorably discharged with Total and Permanent Disability.
i		✓		Income of all persons residing in/on homestead does not exceed $8,200.
j		✓		Taxpayer is a non profit organization or corporation.
k		✓		Property used predominantly for charitable, religious, scientific, literary, or governmental purpose.
l		✓		Taxpayer is an accredited educational institution and used property strictly for educational purposes.

m ..... Other .....

1. — Taxpayer ✓ Agent —No Show —Withdrawn — Accepted P.A. Recommended.

2. Taxpayer or Agent Appeared and Contested the following: See Attached.

3. The Property Appraiser's Denial of Exemption was Based Upon: No Permanent Resident Alien Card.

4. Summary of Evidence Proffered at Hearing:

A. By Property Appraiser's Office:

B. By Taxpayer:

5. Basic and Underlying Facts:

✓ Denial of Exemption Correct: Insufficient or No Evidence Offered to the Contrary.
Recommended Change: (Explain)

6. Other Issues and Findings: Executive Order (President of U.S.) giving Status to Cuban/ Haitian Entrants

CONCLUSIONS OF LAW

7. Ultimate Findings: Taxpayer — IS ..... Taxpayer ✓ IS NOT ..... entitled to requested exemption.

8. Based on the Foregoing, It Is Recommended that the taxpayer's petition, and the requested exemption ✓ be Denied ..... — Be Approved .....

EXEMPTIONS APPLIED

SPECIAL MASTER'S RECOMMEND.—*BEFORE* APPLYING EXEMPTIONS—$27,054; EXEMPTIONS APPLIED—NONE; *AFTER* EXEMPTIONS ARE DEDUCTED—$27,054.

9/14/83 — Date Completed by S.M.

/s/ Peggy Fisher — Special Master's Signature

Administrative Notations ..... S.M.'s decision deferred for the following reason.

✓ Further deliberation required by Special Master. Comments:

— Additional information to be submitted to S.M. by petitioner no later than

(Illegible)
(Illegible)

Juarrero—No immigrant visa.

C/H entrants by virtue of Exec. Order, gives them authority to remain in U.S.

(Elkins v. Moreno)

Toll v. Moreno—Individual who had the ability to adjust status, could be permanent residents for school purposes. 435 U.S. 647.

Plyler v. Doe—Prohibited distinction based upon alienage.

Exec. Order—June 20, 1980 Fed. Register.

INS order prohibiting exclusion hearings.

Executive Order provides "temporary safehaven."

Plyler v. Doe is inapplicable to this case in that the public school education cannot be compared to a homestead exemption, either in importance to the Petitioners, nor in the benefit to the community.

Elkins v. Moreno required the determination of state residency to be decided by the State (Maryland) Courts. The Florida Supreme Court in *The Matter of Cooke,* has clearly declined to extend state residency for homestead purposes to aliens having a visa which is not permanent in nature. The Special Master is unable to find language which would distinguish Florida residency for homestead exemption from forced sale from the exemption from ad valorem taxes. Regardless of the Special Masters views on this issue, the Master is bound by this recent ruling from the Florida Supreme Court. Petition is thus denied.

AFFIDAVIT

State of Florida, County of Dade, ss

AFFIANT, after being duly sworn by the undersigned, states the following:

1. My name is Louis Liphete.

2. I am the owner and have legal title to real property located at 100 NW 75th Street, Miami, Florida.

3. Said property is my permanent residence in which I intend to continue to live and raise my family. Neither myself nor my family have any other residence. This property was bought at great financial sacrifice to myself and my family in order that we might have a permanent and stable environment in which to live and raise our family.

4. Since my arrival in Florida on March 29, 1978, I have lived in Miami, Florida, and, I have considered and intended this to be my permanent home. I have abandoned my previous residence in Haiti as a result of the political oppression and economic exploitation in that country.

I have no intention of returning to Haiti.

5. I am presently employed and have been since 1978 at SANITARY LINEN AND UNIFORM SERVICE, 253 NW 22nd Lane, Miami, Florida.

6. I am not registered to vote because I am not a United States citizen but I intend to become a United States citizen and register to vote here in Miami, Florida, as soon as I am able to do so.

7. I am the holder of a Florida drivers license no. L130-532-46-050 which was issued at Miami, Florida in 1979.

8. I own a motor vehicle, Florida license tag no. GBG 927 which was issued at Miami, Florida.

9. Since my arrival in 1978 I have been employed in Miami, Florida and have paid my federal income tax returns from Miami, Florida.

10. I am a Cuban/Haitian Entrant, A# 21-134-978, and by Executive Order of the President of the United States of America, dated June 20, 1980, I have permission to remain in the United States on an indefinite basis. A bill is presently pending in the Congress of the United States which would allow me to obtain Permanent Resident Status.

FURTHER AFFIANT sayeth not.

/s/ Louis Liphete

Sworn to and subscribed before me this 18 day of July 1983.

/s/ James C. Gregory
Notary Public

My Commission expires: August 6, 1986.

AFFIDAVIT

State of Florida, County of Dade, ss

AFFIANT, after being duly sworn by the undersigned, states the following:

1. My name is Diane Missial.

2. I am the owner and have legal title to real property located at 100 NW 75th Street, Miami, Florida.

2. Said property is my permanent residence in which I intend to continue to live and raise my family. Neither myself nor my family have any other residence. This property was bought at great financial sacrifice to myself and my family in order that we might have a permanent and stable environment in which to live and raise our family.

4. Since my arrival in Florida on March 29, 1978, I have lived in Miami, Florida, and, I have considered and intended this to be my permanent home. I have abandoned my previous residence in Haiti as a result of the political oppression and economic exploitation in that country. I have no intention of returning to Haiti.

5. I am presently employed and have been since my arrival in this country in 1978 at a variety of factory jobs. I am currently employed at 101 NW 24 Street, Miami, Florida.

6. I am not registered to vote because I am not a United States citizen but I intend to become a United States citizen and register to vote here in Miami, Florida, as soon as I am able to do so.

7. I am the holder of a Florida drivers license no. ..... which was issued at NOT APPLICABLE.

8. I own a motor vehicle, Florida license tag no..... which was issued at NOT APPLICABLE

9. Since my arrival in 1978 I have been employed in Miami, Florida and have paid my federal income tax returns from Miami, Florida.

10. I am a Cuban/Haitian Entrant, A# 21 137 021, and by Executive Order of the President of the United States of America, dated June 20, 1980, I have permission to remain in the United States on an indefinite basis. A bill is presently pending in the Congress of the United States which would allow me to obtain Permanent Resident Status.

FURTHER, AFFIANT sayeth not.

/s/ Diane Mitial

Sworn to and subscribed before me this 18 day of July 1983.

/s/ James C. Gregory
Notary Public

My Commission expires: August 6, 1986.

(SEAL)

NOTICE OF DISAPPROVAL OF APPLICATION FOR HOMESTEAD EXEMPTION BY THE COUNTY PROPERTY APPRAISER

May 13, 1983

Petition Number 01 3112 44 0010 5
PARCEL NUMBER (may be shown in lieu of property description)

TO

Louis Liphete
100 N.W. 75 St.
Miami, Fl. 33150

PROPERTY DESCRIPTION:

REASON FOR DENIAL:

Failed to present permanent visa (resident) card.

Exemption(s) Denied: [ ] Homestead $5,000

[X] Homestead $25,000

You are hereby notified that after due consideration I find you not to be entitled under the law to the tax exemption for which you have previously applied for the following reasons, to-wit:

[ ] Applicant did not meet residency requirements as of January 1st.

[ ] Applicant did not have legal or beneficial title to property claimed as homestead as of January 1st.

[ ] Applicant did not, in good faith, make the property claimed as homestead his permanent residence as of January 1st.

[X] Applicant did not meet other statutory requirements. See xxxxxxxxxx above.

A copy of this notice will be filed with the clerk of the (board of county commissioners) (governing body) of this county which shall constitute an appeal to the Property Appraisal Adjustment Board without further action on your part.

The clerk will notify you of the scheduled time at which you may appear before the Property Appraisal Adjustment Board no less than five calendar days prior to the day of such scheduled appearance, to be heard in behalf of your right to such exemption.

I hereby certify that a copy of the foregoing notice was served upon the above named applicant for homestead exemption by (personal delivery) (registered mail) to the post office address above, being the same as that given by the applicant and the original filed with the clerk of the (board of county commissioners) (governing body) of the county in which I am Appraiser on May 13, 1983.

Franklin B. Bystrom
Appraiser

Dade
County, Florida

TAXPAYER'S COPY

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A. D. 1984

CASE NO. 83-2447

ANCEL ALCIME and ELUCIA ALCIME,

Appellants,

vs.

FRANK BYSTROM, as Property Appraiser of Dade COUNTY, FLORIDA,

Appellee.

Opinion filed June 26, 1984.

An Appeal from the Circuit Court for Dade County, Frederick N. Barad, Judge.

Bennett D. Fultz and Jose I. Perez, for appellants.

Robert A. Ginsburg, County Attorney and Daniel A. Weiss, Assistant County Attorney, for appellee.

Before BARKDULL, BASKIN and FERGUSON, JJ.

FERGUSON, Judge.

Notwithstanding the fact that Ancel Alcime has resided in the United States for over twenty years, has resided in the State of Florida for ten years, and has been employed in local government for over six years, because he is an alien without a permanent visa, he cannot, under

the prevailing interpretation of the applicable statute,[1] prove an intention to become a permanent resident of the state for homestead tax exemption purposes. *See Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963); *cf. Matter of Cooke,* 412 So.2d 340 (Fla. 1982) (relying on *Juarrero,* court ruled that foreigner who does not hold permanent visa cannot be a permanent resident of this state and thus cannot place residence 'owned in state beyond reach of creditors under homestead exemption from forced sale). Appellants are thus ineligible for a homestead exemption from ad valorem taxes.

Affirmed.

---

1. Section 196.012(16), (17), Florida Statutes (1981) provides:

(16) "Permanent resident" means a person who has established a permanent residence as defined in subsection (17).

(17) "Permanent residence" means that place where a person has his true, fixed, and permanent home and principal establishment to which, whenever absent, he has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

Family Name (Cap. Letters) Given Name Middle Name
LIPHETE, LOUIS

Country of Citizenship	Passport No. & C. of Issue	File No.
Haiti	510/12 Haiti	A21134 978

U.S. Address (Residence) (No.) (Str.) (Cty.) (St.) (Zip)
50 NW 26 St. No. 1 Miami, Fla.

Date, Place, Time, Manner of Last Entry	Pass. Brd. At
3-29-78 MIA B-2	Nassau

No. Str., Cty., Province (St.) and Country of Per. Resid.
Cote De illegible Haiti

Birthdate	Date of Action	Location Code
2-10-46	1-20-79	MIA.

Cty. Prv. (St.) and Cntry. of Birth	AR Form (Type & No.)	
Cote De illegible, Haiti	☐ ☒ Lifted	1-94 ☐ Not Lifted

Visa Issued At—NIV No.	Social Security Acct. No.
UNK	UNK

Date Visa Issued	Social Sec. No.	Send G.O. Rec. Chk. To:
		MIA

CUBAN/HAITIAN ENTRANT (STATUS PENDING)
REVIEWABLE JANUARY 15, 1981
EMPLOYMENT AUTHORIZED UNTIL
JANUARY 15, 1981

You are required to retain this permit in your possession and to surrender it to the transportation line at the time of your departure unless you depart over the land border of the United States in which case you must surrender it to a Canadian immigration officer on the Canadian border, or to a United States immigration officer on the Mexican border.

DEPARTURE RECORD

PORT—Released OR

DATE: Pending OSC

Employment authorized until 7/7/80 and only in the State of Florida.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration And Naturalization Service
Form Approved OMB NO. 40-RO496
ARRIVAL-DEPARTURE RECORD
Form I-94 (Rev. 9-1-73)

PP AA INPOS.
008 13:25:47 11/10/80
Fm Commr INS Washington, D.C.
To All INS Regional Offices (ROEXM, RODDP)
All INS District Directors
All INS File Control Offices
All INS Border Patrol Headquarters

Received Nov. 10, 1980

Office of District Director
Immigration and Naturalization Service
JFK Federal Building
Boston, Mass.

Hi
Priority . . .

ROCOM(ROEXM, RODDP). Re: Wire, Project 069, dated July 3, 1980 and July 18, 1980 with respect to *Cuban/Haitian aliens. The cutoff date granting "Cuban/Haitian entrant, (status pending) through January 15, 1981 has been advanced from June 19, 1980 to midnight October 10, 1980.* Therefore, as stated in the July 3, 1980 wire and clarified in the July 18, 1980 wire, all *Cubans who arrived in the United States during the period April 21, 1980 to midnight October 10, 1980 and all Haitians who were in INS proceedings as of midnight October 10, 1980 will be paroled or granted extended voluntary departure or stay of deportation, as appropriate, until January 15, 1981 and granted employment authorization, all affected Cuban and Haitian aliens will be called into district and files control offices having jurisdiction.* The aliens Form I-94 will be stamped as outlined in the July 3, 1980 wire. Any OSC that may have been issued for a Haitian placed under deportation proceedings during the period June 19, 1980-October 10, 1980 will be cancelled, any Cuban or Haitian alien, except excludable Haitians processed in the Miami Dis-

trict, who is *encountered* on or after October 11, 1980 and who is then determined to be illegally in the United States, will be processed under normal exclusion or deportation proceedings as appropriate. For example, a Haitian who entered as a B-2 visitor and was apprehended (encountered) out of status on or after October 11, 1980 will be processed under normal deportation *proceedings* and will not be protected by the President's directive. The cases encountered on or after October 11, 1980 and placed under docket control will be reported to CODDP as outlined in the July 18, 1980 wire. The first report will contain all cases placed under docket control from October 11, 1980 through November 30, 1980. Each region will consolidate the district information and submit a consolidated report in a cover memo with the region's monthly CDD-34 reports. In each of these cases, an I-154 or I-161 will be executed as appropriate. In exclusion proceedings, the I-154 will be stamped *"exclusion"* diagonally across the card. All docket cards on Cuban/Haitian aliens encountered on or after October 11, 1980 will be maintained separately from other docket cards and will be divided into a "Cuban" category and a "Haitian" category, no exclusion hearing may be commenced against any excludable Haitian *processed through the Miami district office,* no matter where encountered, arriving on or after *October 11, 1980* due to the court order in *Sammon vs. United States.* Said aliens will be paroled for a period of 60 days and granted work authorization. "Cuban/Haitian entrant (status pending)" should not be given to Haitians who are excludable or deportable for other than documentary reasons (e.g. those who have committed crimes involving moral turpitude, narcotics offenders, etc.). Such aliens

may be placed in exclusion proceedings unless covered by the court order in Shannon v. INS or Deportation Proceedings (unless they had asylum claims pending with or denied by, the INS district office in Miami on or before May 9, 1979). However, the appropriate regional commissioner should be notified and approve before proceedings are instituted in such cases. BENED all regions BETIL DIDIRS, BPSH, FCO's et.

UNITED STATES SOCIAL SECURITY OFFICE
WASHINGTON, D.C. 20201

URGENT — PROGRAM INSTRUCTION
ACTION TRANSMITTAL SSA-AT-80-24 (OFA)

June 27, 1980

TO: State Administrative and Other Interested Agencies and Organizations.

SUBJECT: Newly Designated Immigration and Naturalization Service (INS) Alien Status for Cuban/Haitian Entrants.

REFERENCE: 45 CFR 233.50. SSA Action Transmittal 78-14(OFA).

PURPOSE: This Action Transmittal clarifies that otherwise eligible persons designated by INS with the alien status of *"CUBAN/HAITIAN ENTRANTS (STATUS PENDING)"* are eligible for benefits under Titles I, IV-A, X, XIV, and (AARD) of the Social Security Act.

PROGRAM APPLICABILITY: Old Age Assistance
Aid to Families with Dependent Children
Aid to the Blind
Aid to the Permanently and Totally Disabled
Aid to the Aged, Blind, and Disabled.

BACKGROUND: On June 20, 1980, the United States Coordinator for Refugee Affairs announced the Administration's initiatives to help alleviate the plight of the Cubans who have arrived in the United States since April, and of the Haitians who are currently undergoing proceedings with the INS.

The significant elements in the Administration's initiatives are:

(a) Cuban entrants who arrived in the United States during the period April 23 to June 19, 1980, and

who are in INS proceedings as of June 19, and all Haitians who are in INS proceedings as of June 19, 1980, will have their status in the United States reviewed every six months. A new INS alien status designation is to be assigned:

"CUBAN/HAITIAN ENTRANTS (STATUS PENDING)."

(b) This new designation will entitle these Cubans and Haitians, if otherwise eligible, to AFDC and other Federal and federally matched public assistance programs' benefits. If a person with Cuban/Haitian entrant status is residing in a government processing center, the State must consider the benefits provided at the center in accordance with its State plan provisions and policies on in-kind and other types of income. Normal Federal/State matching will apply.

(c) These Cuban or Haitian aliens must present the proper INS documents in order to meet the alien status factor of eligibility. Cubans and Haitians who do not have either the documentation identified in the Instruction or in AT-78-14 are not eligible for AFDC, OAA, AB, APTD and AABD.

(d) Cuban and Haitian entrants arriving after June 19, 1980, will be processed under normal INS procedures. They will *NOT* receive this new immigration status. Thus, they will be eligible for assistance only to the extent that they qualify under the normally assigned INS designations outlined in SSA — Action Transmittal — 78-14, dated April 17, 1978.

The Administration plans to propose special legislation providing for a permanent adjustment in the alien status of this group of Cuban/Haitian aliens.

INSTRUCTION: Cubans who entered the United States during the period April 21 to June 19, 1980, and Haitians who are in INS proceedings as of June 19, who have received the INS status of *"CUBAN/HAITIAN ENTRANTS (STATUS*

PENDING)," are eligible for assistance if they meet all of the other eligibility factors. They are considered to be permanently residing in the United States under the color of law and meet the requirements of 45 CFR 233.50.

In order to identify clearly the group included within the Administration's directive, the INS will stamp the Forms I-94 currently in the possession of those aliens with the following: "CUBAN/HAITIAN ENTRANT (STATUS PENDING) REVIEWABLE JANUARY 15, 1981. EMPLOYMENT AUTHORIZED UNTIL JANUARY 15, 1981." This stamp will be uniquely identifiable with that group. The INS believes that it will take approximately three

(3) weeks to reissue new documents to these aliens entitling them to meet the alien eligibility factor for benefits.

INQUIRIES TO: SSA Regional Commissioners.

/s/ Thomas Higgins
Associate Commissioner
for Family Assistance

TELEGRAPHIC MESSAGE

Name of Agency (Illegible) Security Classification
Action Priority Unclassified

(Balance of Heading Illegible)

P.M.: SSA, Office of Operational Policy and Procedures, Baltimore, Maryland.

TO: All SSA Regional Commissioners.

TO: All SSA Assistant Regional Commissioners, Illegible, PA., Illegible.

TO: All SSA Program Service Centers.

TO: All SSA Offices/Field/Central Office.

TO: All Area Directors.

TO: All SSADBS/SSASOS/SSATSCS/SSADARS.

TO: All SDDS.

Emergency Instruction OAP-80- IT- -60
SJ5-2-1.

Extensive reproduction unnecessary as manualized instructions will follow shortly.

Subject: SSI eligibility for recently arrived Cuban and Haitian entrants CH 2333.

On June 20, 1980, the administration approved procedures adjusting the status of certain Cuban/Haitian aliens. The President has decided that the Cubans who arrived in the U.S. during the period April 21-June 19, 1960 and who are in Immigration and Naturalization Service (INS) proceedings (I.E., filed an application with INS to remain indefinitely in the U.S.) as of June 19, 1980 and all Haitians who are in INS proceedings as of

TELEGRAPHIC MESSAGE

Name of Agency (Illegible) Security Classifcation
Action Priority Unclassified
(Balance of Heading Illegible)

June 19, 1980 will have their parole renewed as "Cuban/Haitian Entrant-Status Pending." This status is effective beginning with the issuance of the stamped I-94.

The stamped I-94 constitutes evidence of permanent residence in the U.S. under color of law. Under regulations at U.C.F.R. 416.204 illegible. With this status, Cubans and Haitians, if they otherwise qualify, will be eligible for SSI and, under the Rules of the States in which they are residing, Medicaid, AFDC, Emergency Assistance. States will receive the usual Federal/State matching.

In order to qualify for this status, Cuban and Haitian Entrants must first report to INS for annotation of their Parole Documents. Their INS Form I-94 will be stamped with the legend "Cuban/Haitian Entrant (Status Pending) reviewable January 15, 1981. Employment authorized until January 15, 1981." Every effort should be made to screen out persons who are clearly ineligible. Follow the oral inquiry procedure in CH 12101.1 for individuals who claim this special status but do not have a properly annotated 1-94 in their possession and/or are otherwise ineligible for SSI. Persons who inquire about obtaining an 1-94 should be referred to INS.

Eligibility exists when the person has been a resident of the U.S. for 30 days, has a properly stamped 1-94 in his or her possesion and controls NSA to file a claim and meets all other SSI eligibility requirements. These conditions must be met to establish SSI eligibility.

Current Policy No. 193

CUBAN-HAITIAN ARRIVALS IN U.S.

June 20, 1980

United States Department of State

Bureau of Public Affairs
Washington, D.C.

Following is a statement by Victor H. Palmieri, U.S. Coordinator for Refuges Affairs, at a State Department press briefing on June 20, 1980.

For more than two decades south Florida has been providing a haven for Cubans fleeing from Castro's repressive policies and Cuba's failing economy. In recent years, it has also become an entry point for thousands of Haitian "boat people." In the last 2 months, more than 114,000 Cubans have entered south Florida by boat.

The sudden and disorderly arrival of these Cubans on our shores without proper documentation has presented this country with an unprecedented political and humanitarian challenge. Under international law, we have an obligation to provide temporary refuge to arrivals claiming a well-founded fear of persecution in their homeland. Under previous U.S. law, we did in fact provide a permanent haven to almost 800,000 Cubans fleeing Communism under Castro. Several factors, however, have determined the way we have responded to this extraordinary emergency and the strains it has created in south Florida.

First, those Cubans admitted in past years arrived under an orderly departure program that involved interviews and reviews of documentation before departure from Cuba. This allowed a careful screening process in accordance with U.S. immigration laws. This has not occurred with the current Cuban or Haitian entrants.

Second, our refugee and asylum provisions are now governed by new legislation, the Refugee Act of 1980, which came into effect on April 1 of this year. The Refugee Act established a framework for selecting groups of refugees overseas for admission to the United States, as well as for granting asylum to individuals already in this country who can demonstrate a well-founded fear of persecution if they were to return to their country of origin. But this legislation did not contemplate the kind of situation we face now, with a sudden massive influx, without overseas processing and valid documentation. The procedures for dealing with asylum seekers in this country require lengthy examinations on a case-by-case basis that would leave many arrivals in limbo status for long periods, without eligibility for federally funded assistance. And the strict standards for asylum would prevent many of the Cubans and Haitians from qualifying for admission under that category.

This is clearly an intolerable situation for the Cuban and Haitian entrants as well as for the States that are receiving and resettling them, particularly the State of Florida. To date, the Cuban-American community and the voluntary resettlement agencies have generously assisted these exiles. But they can no longer bear this burden alone, especially since those being released from the processing

centers are increasingly persons without relatives in this country. The size of this special population and the difficulty of returning them to their homelands or resettling them in other countries make it all the more important to clarify their status and eligibility for some forms of federally funded assistance.

In order to redress this extraordinary situation, yet maintain the integrity of our refugee laws for those applying for admission in the prescribed manner, the President has decided to seek special legislation regularizing the status of Cuban-Haitian entrants. This legislation will allow them to remain in the United States and will make them eligible for certain benefits, but it will not provide the status or benefits accorded to those admitted as refugees or granted political asylum.

U.S. Steps

Until this legislation is enacted, we will take the following steps to deal with the special needs of the communities in which the Cuban-Haitian entrants relocate and to prevent the occurrence of such crises in the future.

• Cubans who have arrived in the United States during the period April 21-June 19, 1980, and who are in Immigration and Naturalization Service (INS) proceedings as of June 19, 1980, and all Haitians who are in INS proceedings as of June 19, 1980, will have their parole into the country renewed for a 6-month period as "Cuban-Haitian entrants (status pending)."

• Under this 6-month parole, these Cuban-Haitians will be eligible, if they otherwise qualify, for Supplemental Security Income (SSI—for the elderly and handicapped),

Medicaid, Aid to Families with Dependent Children (AFDC), and emergency assistance under the rules of the States in which they are residing and with normal Federal-State matching of funds. In order to qualify, Cuban-Haitian entrants must first report to the INS for their new parole documents. Procedures for applying for these benefits will be announced by INS and the Department of Health and Human Services next Friday, June 27.

• Minor children in camps without close relatives in this country will be provided English-language training, health services, counseling, and individualized planning for permanent placement.

• Per capita grants will be provided to private resettlement agencies for all persons leaving processing centers after June 19, 1980, and for Cuban-Haitian entrants being relocated out of the south Florida area after that date. In addition, funds will be provided to the resettlement agencies to provide employment counseling and referral services to all Cuban-Haitian entrants already released from camps or resettled directly into the Miami area.

• The President has already sought funding totaling $385 million to finance reception, processing, care and maintenance, transportation, initial relocation, health services, and educational costs as part of the FY 1980 supplemental appropriation. The Administration will seek necessary funding for the continuation of this program in FY 1981.

• Special legislation will be submitted to the Congress as soon as possible to:

—Establish a "Cuban-Haitian entrant" status for recently arrived Cubans and Haitians;

—Define services and benefits for these arrivals for 1 year after release from processing centers;

—Provide SSI, Medicaid, AFDC, and emergency assistance under the rules of the States in which they are residing and with normal Federal-State matching of funds; and authorize retroactive reimbursement to States and localities for 75% of the total cost of other general assistance, medical assistance, special educational programs, and social services for 1 year;

—Provide for conversation to permanent resident alien status after 2 years;

—Improve future asylum processing, both to expedite case-by-case review, including exclusion and deportation, and to reduce the likelihood of future problems of this nature;

—Provide minor children without close relatives in this country English-language training, health services, counseling, and individualized planning for permanent placement. States will be reimbursed for 100% of the costs of maintenance and services provided to such unaccompanied minors until they reach the age of majority; and

—Seek a method to identify and extend "Cuban-Haitian entrant status" to those other Haitian "boat people" who have arrived in Florida prior to June 19, 1980, but who are not in INS proceedings.

• Criminals continue to be subject to detention and exclusion or deportation from the United States.

• Processing of applications for asylum will continue. Those who are granted asylum status will be eligible to adjust to permanent resident alien status after 1 year.

• U.S. Government enforcement agencies will continue to interdict boats bringing undocumented aliens into the United States. Enforcement will be maintained to prevent future illegal arrivals, and violators will be subject to civil or criminal prosecution in accordance with the President's declaration of May 14, 1980. Persons who arrive illegally after June 19, 1980, will not be eligible for the program and will be subject to exclusion or deportation in accordance with U.S. immigration laws.

All of these steps are consonant with the policy that the President outlined on May 14. Throughout this emergency, our objectives have been to uphold our international obligations and protect the integrity of our immigration and refugee laws. We have therefore sought to treat the arriving Cubans and Haitians in an equitable way by providing them temporary safehaven until their status can be resolved in this contry or until they are offered resettlement in other countries.

In the case of the Cubans, we have also tried to limit both the inhumane and hazardous conditions of their journey and their impact on communities in Florida by deterring the Cuban-American community from illegally bringing in any more undocumented Cubans. At the same time, we have pursued international efforts to negotiate with Castro to establish an orderly departure program to allow the humane and manageable departure of Cubans who qualify for admission to the United States under the Refugee Act of 1980.

To date, our efforts have virtually stopped the boat flotilla from Cuba. We hope that our enforcement measures will discourage others from undertaking the long and dangerous journey by boat in violation of our laws. The problem of undocumented aliens in the United States is clearly broader than the current Cuban-Haitian entrants, and it will have to be the subject of future policy decisions made in consultation with the Congress. We expect that the Select Commission on Immigration and Refugee Policy will be addressing the situation of Haitians who are not covered by the President's decisions I have announced today, as well as other documented aliens in this country.

Summary

In summary, the current Cuban-Haitian crisis is but a symptom of a world-wide trend toward greater dislocation and migration. In the past, the American people have responded generously to the plight of the uprooted. And our laws provide for the acceptance of large numbers of immigrants and refugees. In fact, we will be admitting over 600,000 this year.

However, there are millions more who would like to begin new lives in this country than we can accept. Our laws therefore establish numerical limits and require careful selection and processing prior to admission. Many applicants for admission have waited for years, and on arrival they have managed with little or no assistance from the Federal Government.

In the case of Cuba, we have long been the country of preferred asylum. We cannot stand by in silent witness to the unsafe and uncontrolled exodus from Cuba,

yet our laws do not allow us to accept for permanent resettlement any Cuban or Haitian who arrives here in this manner. While we work for the eventual return of those who are found inadmissable under our laws, particularly criminals, we must now find ways to resettle those whom common decency compels us to receive.

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INTERPRETER RELEASES

Information Service on Immigration, Naturalization and Related Matters

Maurice A. Roberts, Editor
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American Council For Nationalities Service
20 West 40th St., New York, N.Y. 10018

Vol. 57, No. 25 June 30, 1980

RECENT SIGNIFICANT DEVELOPMENTS

Cubans and Haitians Receiving Temporary Respite
Final Extension to Sept. 28 Granted to Reluctant Nicaraguans
INS Issues Instructions on Asylum and Refugee Adjustments
Bernsen to Head Select Commission's Legal Research
Justice Dept. Challenges Discrimination Against Iranian Students by States
INS Amends Regulations on Free Legal Services List
Few Changes in Visa Numbers for July
New Publications Available
Seminar Tapes Available

Cubans and Haitians Receive Temporary Respite

Confronted by the growing number of Cuban and Haitian aliens who have recently sought refuge in Florida, the Carter administration has concluded that this sort of situation is not within the contemplation of the Refugee Act of 1980, 96-212, which went into effect on April 1, 1980. It will therefore not consider them as refugees within the meaning of that Act, but will instead seek special

legislation to cover the status of the Cuban and Haitian entrants. Pending enactment of such legislation, Cubans who arrived in the U.S. between April 21 and June 19, 1980 and are in INS proceedings as of the latter date, as well as all Haitians who are in INS proceedings as of June 19, 1980, will have their parole into the U.S. renewed for a 6-month period as "Cuban-Haitians (status pending)." This will qualify many of them for various forms of public assistance. Details are spelled out in the statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs, on June 20, 1980, reproduced in Appendix I of this *Release.*

Further details were announced by an INS press release dated June 26, 1980, which reads as follows:

> The Immigration and Naturalization Service today announced procedures under which most Cuban and Haitian aliens would be permitted to remain in the U.S. for an additional six months.
>
> Acting INS Commissioner David Crosland said extensions to January 15, 1981, will be granted to all Cubans and Haitians who were in INS proceedings as of June 19.
>
> Mr. Crosland said local INS offices will initiate procedures next week to recall Cubans and Haitians in an orderly manner and stamp their current identification card to show their new status.
>
> The stamp will read: "Cuban/Haitian Entrant (status pending) reviewable January 15, 1981. Employment authorized until January 15, 1981." Precautions are being taken to prevent forgeries.
>
> The procedure is in compliance with President Carter's previously announced policy to give Congress time in which to consider special legislation that would regularize the status of Cubans and Haitians known to be in the U.S. prior to June 19.

Under the proposed legislation arrivals after June 19 would not be eligible for the new status, Mr. Crosland said.

The INS said about 114,000 Cubans and 15,000 Haitians would be affected by the new order.

The INS Miami district office and other local offices will announce details next week as to when processing will begin, location of processing centers and the order in which persons may come to INS to have their documents stamped. Local offices will also contact voluntary agencies to provide them with details of the procedure.

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An Information Service on Immigration, Naturalization and Related Matters

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Vol. 57, No. 41 October 23, 1980

RECENT SIGNIFICANT DEVELOPMENTS

President Expands Cuban-Haitian Entrant Program
President Delegates Refugee Relief Authority to Secretary of State
President Determines Refugee Numbers for Fiscal 1981
INS Corrects Error in INS Refugee Regulations
No Further Blanket Extension for Reluctant Nicaraguans
Report on Access of Aliens to Legal Transfer Programs
Colloquium on Transnational Legal Problems of Refugees
New Publication Available

President Expands Cuban-Haitian Entrant Program

The temporary respite heretofore given Cuban and Haitian aliens who this Spring sought refuge in Florida has now been extended to more recent arrivals as well.

Under the initial program, which reflected the administration's refusal to consider the Cubans and Haitians as being within the ambit of PL 96-212, the Refugee Act of 1980, a new status was created, "Cuban-Haitians (status

pending)."* Cubans who arrived in the U.S. between April 21 and June 19, 1980 and were in INS proceedings as of the latter date, as well as all Haitians who were in INS proceedings as of June 19, 1980, were to have their parole into the U.S. renewed for a period of 6 months, pending the introduction of special legislation.** The same treatment has now been authorized for those who arrived between June 20 and October 10, 1980. The following is quoted from a statement released on October 21, 1980 by the Cuban-Haitian Task Force:

> Christian R. Holmes, Director of the Cuban-Haitian Task Force, announced today that the President has decided that those Cuban and Haitian boat people who arrived in south Florida during the period June 20-October 10, 1980, and who are in Immigration and Naturalization Service (INS) proceedings as of October 10, 1980, will be paroled into the United States as "Cuban-Haitian Entrants (Status Pending)." Approximately 11,000 Cubans and 5,500 Haitians arrived in south Florida during this period. The decision was influenced by the recent enactment (on October 10) of the Refugee Education Assistance Act of 1980.
>
> Mr. Holmes stated that "the status of these people will be the same as those Cubans and Haitians covered by an Administration announcement of June 20, 1980, given by Ambassador Victor H. Palmieri, U.S. Coordinator for Refugee Affairs."

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* Further details may be found in *Interpreter Releases*, Vol. 57, No. 25, June 30, 1980, pp. 305-306, 312-313; Vol. 57, No. 26, July 10, 1980, pp. 327, 333-336.

** The administration bill, S. 3013, has since been introduced on August 5, 1980. For its text and a discussion of its provisions, see *Interpreter Releases Bulletin* dated August 14, 1980, pp. 401a-401f.

Mr. Holmes noted that the Refugee Education Assistance Act of 1980 provides post-June 19 Cuban and Haitian arrivals with eligibility for certain education and welfare benefits, but does not grant them any special immigration status. In light of this, legislation providing such special immigration status, which is currently being sought by the Administration for the pre-June 19 group, would be broadened to include those Cubans and Haitians in INS proceedings on or before October 10.

In the meantime, the unanticipated arrival of so many additional aliens seeking a haven here has resulted in additional measures for relief funding.*

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* See *Interpreter Releases*, Vol. 57, No. 37, September 19, 1980, p. 447; Vol. 57, No. 40, October 16, 1980, pp. 482, 483, 493.